Lim Boon Neo v Arumugam a/l SA Renganathan & Anor

PRIVY COUNCIL (ON APPEAL FROM SINGAPORE) — APPEAL NO 33 OF 1988
LORD KEITH OF KINKEL, LORD BRANDON OF OAKBROOK, LORD TEMPLEMAN AND LORD LOWRY
22 JANUARY 1990

Civil Procedure — Appeal — Function of appellate court — Trial court's finding of fact

This appeal concerned a shophouse, the issue being whether the owner of the shophouse had granted an oral tenancy to a firm of which her now deceased husband and another were the then two partners. The district court found that no such tenancy had been granted. In the High Court, the judge disagreed with the trial judge and decided to the contrary. The Court of Appeal restored the trial judge's finding as it found that in the circumstances, the High Court judge was not entitled to interfere with the findings of fact of the trial judge.

Held, dismissing the appeal:

(1) The only issue in this case was one of fact, which did involve some extent the credibility and reliability of witnesses.

(2) There were no sufficient grounds for overturning the decision of the trial judge. The Court of Appeal's reasons for restoring that decision were convincing. The appeal was therefore dismissed with costs.

Cases referred to

1 *Thomas* v *Thomas* [1947] AC 484 (folld)
2 *Benmax* v *Austin Motor Co* [1955] 1 All ER 326 (folld)

Anthony Cripps QC (*R Karuppan Chettiar* with him) for the appellants.

Yusuf Jumabhoy (*P Balagopal* with him) for the respondents.

Cur Adv Vult

Lord Keith of Kinkel (delivering the judgment of the court): This appeal is concerned with a shophouse at 20 Klang Road, Singapore. The issue is whether or not the now deceased Madam Perumal Ramayee, who became owner of the shophouse in 1962, granted an oral tenancy of it, in or about 1966, to a firm called the Sithi Vinayagar Company ('SV Co') of which her now deceased husband SA Renganathan and the now also deceased G Sarangapany were then the two partners. Renganathan died on 2 May 1973 and Madam Ramayee on 18 September 1973. Under the partnership agreement, Renganathan's death resulted in the whole partnership assets passing to Sarangapany by survivorship. Sarangapany died on 16 March 1974, and his widow Lim Boon Neo inherited his whole estate. If there was a tenancy of 20 Klang Road, she became entitled to it and her tenancy would be protected under the Control of Rent Act (Cap 58, 1985 Ed). By the proceedings which give rise to the present appeal, the legal representatives of Madam Ramayee, her two sons, sought vacant possession of 20 Klang Road against Lim Boon Neo, and also against one Ramasamy, who lived with his wife and family in the upper floor of the premises. The plaintiffs obtained judgment in the district court, after trial, on 7 November 1980. That judgment was reversed by a single judge of the High Court on 12 November 1984 but restored by the Court of Appeal in 9 October 1987. Lim Boon Neo has since died and her legal representative now appeals to the Board. Ramasamy has taken no part in the proceedings since the judgment of the district court.

In the course of the trial before the district court, it appeared that following her acquisition of the property in 1962, Madam Ramayee lived there with her husband Renganathan and her two sons until 26 July 1966 when she moved to a house which she had bought at 27 Beng Wan Road. During that period, Renganathan at times stored in the shop part of the premises goods belonging to the SV Co, which traded in textiles. One of Madam Ramayee's sons, Arumugam, stayed on at 20 Klang Road till March 1967. About this time Ramasamy, who was employed by the SV Co, moved in with his wife. There was a dispute about the circumstances under which he did so. According to the evidence of Arumugam, Ramasamy was anxious to find some premises to live in so that he could bring his wife over from India. After some persuasion and having discussed the matter with Madam Ramayee, Renganathan allowed Ramasamy to live temporarily in the premises on the basis of friendship. There was evidence that relations between Ramasamy's wife and Madam Ramayee were quite close. Ramasamy admitted that for a time Madam Ramayee paid his wife $100 a month for household expenses, and held at her house the naming ceremony for his child. According to Ramasamy, however, Renganathan informed him that he could stay in the premises as long as he worked for the SV Co, and that he was required to look after the premises as there was no watchman, adding that the company would pay the rental for them.

Lim Boon Neo did not, in the course of her evidence at the trial, profess to have personal knowledge of a tenancy. Her case rested almost entirely on entries in certain account books of the SV Co, from 1966 to 1972. These entries purported to represent an account with the company in the name of Madam Ramayee and to show that she had been credited with rent for 20 Klang Road at the rate of $47 per month for the period from January 1966 to December 1970 and at the rate of $1,500 per month from January 1971 to December 1972. There were also shown debits in respect of assessments and insurance premiums. These accounts were spoken to by Thiffany Pillay, a clerk who had made most of the entries. He deponed that Sarangapany wished the entries to be made and persuaded Renganathan to agree to them as it would be useful for tax purposes. The entries were made at the end of each year and in fact no money changed hands. In cross-examination he was asked: 'It is your evidence that the entries in the account books of all the rentals paid in

connection with premises 20 Klang Road are all fictitious entries?' His reply was: 'Yes. They were entered on the insistence of G Sarangapany'.

On behalf of the plaintiffs there was produced a property tax return for 20 Klang Road dated 20 November 1972 and signed by Renganathan on behalf of Madam Ramayee. This stated that the premises were owner-occupied and indicated that no rent was paid in respect of them.

There was evidence that Madam Ramayee during her lifetime had owned premises at 199 Tanjong Pagar Road which were tenanted by the SV Co. Lim Boon Neo produced two receipts for rental dated in January and February 1976 on forms headed with Madam Ramayee's printed names and address.

A curious feature of the case was that in her defences as originally framed, Lim Boon Neo had pleaded that neither she nor the SV Co had ever been in occupation of 20 Klang Road and that the action against her was misconceived. These defences were later amended to plead an oral tenancy. Further, the defences originally filed by Ramasamy had denied that he occupied the premises as an employee of the SV Co, and averred they had been offered to him by the deceased Renganathan 'out of friendship'. He pleaded that the plaintiff's claim was barred by s 9(1) of the Limitation Act (Cap 163, 1985 Ed) since more than 12 years had elapsed since it had first accrued. These defences also were later amended.

The trial judge in the district court concluded that Lim Boon Neo had not, on a balance of probabilities, proved an oral tenancy of 20 Klang Road and found that the SV Co had only been granted a licence to store goods on the premises.

In the High Court, Lai Kew Chai J disagreed with the trial judge's evaluation of the evidence, finding that Renganathan on behalf of his wife had, in 1966, agreed to grant an oral tenancy to the SV Co at the rent of $47 per month. He discounted the evidence of Pillay that the rental entries in the firm's account were fictitious on the ground that his only reason for saying so was that Sarangapany had insisted on them. He did not advert at all to Pillay's evidence that the entries in the account books had been made for tax purposes and that no money had in fact changed hands over a period of six years, although rent had been paid for the premises at 199 Tanjong Pagar Road, and he described the property tax return signed by Renganathan as an innocuous piece of evidence. It appears also that he accepted the evidence of Ramasamy where it conflicted with that of Arumugam, though clearly the trial judge had not done so.

The Court of Appeal decided that Lai Kew Chai J was not, in the circumstances, entitled to interfere with the findings of fact of the trial judge. They did so in the light of the well known observations of Lord Thankerton in *Thomas* v *Thomas*[1] at pp 487-488 and of Lord Reid in *Benmax* v *Austin Motor Co*[2] at p 329, as to the proper function of an appellate court in dealing with findings of fact by a trial judge. They took the view that questions of credibility and reliability were involved in resolving the conflict of testimony between Arumugam and Ramasamy, and that Lai Kew Chai J was not entitled to dismiss as he did Pillay's evidence that the rental entries in SV Co's accounts were fictitious. They therefore restored the judgment of the district court.

Their Lordships are of the opinion that the decision of the Court of Appeal was entirely correct. The only issue in the case was one of fact, which did involve to some extent the credibility and reliability of witnesses. There were no sufficient grounds for overturning the decision of the trial judge, and the reasons given by the Court of Appeal for restoring it are convincing. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Le Brasseur & Monier-Williams; Kingsford Stacey.*

Reported by *Terence Tan Bian Chye*